

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board On)	
Universal Service)	CC Docket No. 96-45
)	
Petition of the Public Service Commission)	
of the District of Columbia For Waiver)	
)	
Petition for Waiver of Section 214(e) and)	
254(e) of the Telecommunications Act of)	
1996 filed by the New Jersey Board of Public)	
Utilities)	
)	

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MEMORANDUM OPINION AND ORDER

Adopted: November 8, 2000

Released: November 9, 2000

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant the requests from the Public Service Commission of the District of Columbia (D.C. Commission) and New Jersey Board of Public Utilities (New Jersey Commission) for waivers to permit the retroactive distribution of federal universal service support to certain carriers that were not designated as eligible telecommunications carriers (ETCs) by January 1, 1998.¹ These waivers will permit these carriers to receive federal universal service support for the period between January 1, 1998, and the date that these carriers were designated as ETCs. We find good cause to grant these requests and thereby permit consumers served by these carriers to benefit from the support to which they would have been entitled, but for the circumstances that prevented the D.C. and New Jersey Commissions from designating these carriers as eligible for receipt of federal universal service support prior to January 1, 1998.

¹ See *Petition of the Public Service Commission of the District of Columbia for Waiver*, filed on December 17, 1998 (D.C. Petition); *Petition for Waiver of Section 214(e) and 254(e) of the Telecommunications Act of 1996 Filed by the New Jersey Board of Public Utilities*, filed on December 28, 1998 (Bell Atlantic-NJ Petition); *Petition for Waiver of Section 214(e) and 254(e) of the Telecommunications Act of 1996 Filed by the New Jersey Board of Public Utilities*, filed on December 24, 1998 (United-NJ Petition).

II. BACKGROUND

A. The Act

2. Section 254(e) provides that, after the effective date of the Commission's regulations implementing section 254, "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."² The Commission established January 1, 1998, as the date on which the newly adopted modifications to the existing universal service support mechanisms would take effect.³ Therefore, as of January 1, 1998, only carriers designated as ETCs are eligible to receive federal universal service support.⁴

3. In the *Fourth Reconsideration Order*, the Commission affirmed its conclusion that, as of January 1, 1998, universal service support may be disbursed only to carriers that have been designated as ETCs.⁵ The Commission concluded, however, that a state commission that was unable to designate, by January 1, 1998, a carrier that sought ETC designation before January 1, 1998, may, once it has designated such carrier, file with the Commission a petition for waiver requesting that the carrier receive universal service support retroactive to January 1, 1998.⁶ The Commission indicated that a state commission filing such a petition must explain why it did not designate such carrier as eligible by January 1, 1998, and provide a justification for why providing support retroactive to January 1, 1998 serves the public interest.⁷ The Commission concluded that it is in the public interest to permit telecommunications carriers that were eligible to receive universal support on January 1, 1998, but that were not designated as eligible by their state commission by that date, to be permitted to seek retroactive support. The Commission concluded that allowing retroactive support will permit consumers served by those carriers to benefit from the support to which those carriers would have been entitled, but for the circumstances that prevented the state commission from designating the carrier as eligible for

² See 47 U.S.C. § 254(e).

³ See 47 C.F.R. § 54.201(a)(1).

⁴ In Public Notices released on August 14, 1997 and September 29, 1997, the Common Carrier Bureau alerted state commissions of their obligation to designate ETCs by January 1, 1998. See *Listing of Changes Adopted in the May 8 Order that Will Take Effect January 1, 1998*, Public Notice, DA 97-1747 (rel. Aug. 14, 1997); *Common Carrier Bureau Announces Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers*, Public Notice, DA 97-1892 (rel. Sept. 29, 1997).

⁵ *Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5333, para. 23 (1997) (*Fourth Reconsideration Order*).

⁶ *Fourth Reconsideration Order*, 13 FCC Rcd at 5333, para. 23. See also 47 C.F.R. § 54.201(a)(2).

⁷ *Fourth Reconsideration Order*, 13 FCC Rcd at 5333, para. 23. See also 47 C.F.R. § 54.201(a)(2).

receipt of universal service support prior to January 1, 1998.⁸

B. Petitions for Waiver

4. D.C. Petition. On December 17, 1998, the D.C. Commission filed a petition on behalf of Bell Atlantic – Washington, D.C., Inc. (Bell Atlantic-DC) to waive the requirement that only carriers designated as ETCs may receive universal service support after January 1, 1998, and thereby permit Bell Atlantic-DC to receive universal service support retroactive to January 1, 1998.⁹ The D.C. Commission notes that while Bell Atlantic-DC filed an application with the D.C. Commission requesting designation as an eligible carrier on September 30, 1997,¹⁰ Bell Atlantic-DC was not designated as an ETC by the D.C. Commission until December 17, 1998.¹¹ The D.C. Commission cites several justifications for its inability to designate Bell Atlantic-DC as an ETC by January 1, 1998. Specifically, the D.C. Commission indicates that it has been subject to substantial staff reductions, procurement restrictions on retaining outside consultants, and an increased workload, which delayed the resolution of all matters pending before the D.C. Commission.¹² Given these impediments, and difficulties in reconciling Bell Atlantic-DC's tariff revisions with the Commission's Lifeline rules, the D.C. Commission was unable to approve Bell Atlantic-DC's designation request until December 17, 1998.¹³

5. The D.C. Commission argues that consumers should not be penalized for the D.C. Commission's delay in designating Bell Atlantic-DC as eligible to receive federal universal service support. The D.C. Commission notes that Bell Atlantic-DC took reasonable steps to be designated as an eligible carrier by January 1, 1998 and, at present, is the only eligible carrier in the District of Columbia.¹⁴ The D.C. Commission therefore contends that permitting Bell Atlantic-DC to receive support retroactive to January 1, 1998, will "serve the public interest in

⁸ *Fourth Reconsideration Order*, 13 FCC Rcd at 5333, para. 23.

⁹ D.C. Petition at 1 (Bell Atlantic-DC is now Verizon Washington, D.C., Inc.). On November 16, 1999, the Common Carrier Bureau sought comment on the D.C. Petition. See *Public Service Commission of the District of Columbia Seeks Retroactive Universal Service Support on Behalf of Bell Atlantic-Washington, D.C., Inc.*, Public Notice, CC Docket No. 96-45, DA 99-1609 (rel. Nov. 16, 1999). Comments were filed in response to this Public Notice by the Office of the People's Counsel for the District of Columbia (OPC Comments), Bell Atlantic (Bell Atlantic Reply Comments), and the Public Service Commission of the District of Columbia (D.C. Commission Reply Comments).

¹⁰ D.C. Petition at 1 *citing* Formal Case No. 962T, Letter from J. Henry Ambrose to Jesse P. Clay, Jr., at 3 (dated September 30, 1997).

¹¹ See Public Service Commission of the District of Columbia, *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 11265 (dated Dec. 17, 1998) (D.C. Commission Order).

¹² D.C. Petition at 4-6.

¹³ D.C. Petition at 5.

¹⁴ D.C. Petition at 5.

that it will allow BA-DC's low-income customers, many of whom are elderly, to continue to receive vital telecommunications services at an affordable price."¹⁵

6. New Jersey Petitions. The New Jersey Commission filed petitions on behalf of United Telephone Company of New Jersey, Inc. (United-NJ) and Bell Atlantic-New Jersey, Inc. (Bell Atlantic-NJ), respectively, to waive the requirement that only carriers designated as ETCs may receive federal universal service support after January 1, 1998, and thereby permit United-NJ and Bell Atlantic-NJ to receive universal service support retroactive to January 1, 1998.¹⁶ The New Jersey Commission notes that both United-NJ and Bell Atlantic-NJ requested designation from the New Jersey Commission prior to January 1, 1998.¹⁷

7. The New Jersey Commission indicates that, "due to the timing of the filing of its ETC and Lifeline petitions, and the press of Board business, the Board was unable to act on [United's and Bell Atlantic-NJ's] ETC application to assure January 1, 1998 federal universal service eligibility."¹⁸ Given these impediments, the New Jersey Commission was unable to designate United-NJ as an ETC until January 22, 1998,¹⁹ and Bell Atlantic-NJ until February 18, 1998.²⁰ The New Jersey Commission contends that without universal service support, the ability of United-NJ and Bell Atlantic-NJ to provide universal service throughout their service territories will be affected.²¹ The New Jersey Commission therefore contends that granting universal service support retroactive to January 1, 1998, for United-NJ and Bell Atlantic-NJ is in the public interest.²²

III. DISCUSSION

8. We find that good cause exists to grant the requests from the D.C. and New Jersey Commissions to permit the retroactive distribution of federal universal service support to Bell

¹⁵ D.C. Petition at 5-6.

¹⁶ See United-NJ Petition; Bell Atlantic-NJ Petition (Bell Atlantic-NJ is now Verizon New Jersey). On August 9, 2000, the Common Carrier Bureau sought comment on both the United-NJ and Bell Atlantic-NJ petitions. See *New Jersey Board of Public Utilities Seeks Retroactive Universal Service Support on Behalf of Bell Atlantic-New Jersey, Inc., and United Telephone Company of New Jersey, Inc.*, Public Notice, CC Docket No. 96-45, DA 00-1807 (rel. Aug. 9, 2000). Comments were received in response to this Public Notice by Sprint Corporation (Sprint Comments) and Verizon New Jersey (Verizon Comments).

¹⁷ See United-NJ Petition at 2 (indicating that United-NJ filed its designation application on November 7, 1997); Bell Atlantic-NJ Petition at 1 (indicating that Bell Atlantic-NJ filed its designation application on December 18, 1997).

¹⁸ United-NJ Petition at 4; Bell Atlantic-NJ Petition at 4.

¹⁹ United-NJ Petition at 2 (designation effective Feb. 1, 1998).

²⁰ Bell Atlantic-NJ Petition at 1-2.

²¹ United-NJ Petition at 4-5; Bell Atlantic-NJ Petition at 4.

²² United-NJ Petition at 5; Bell Atlantic-NJ Petition at 4.

Atlantic-DC, United-NJ, and Bell Atlantic-NJ. In so doing, we conclude that the D.C. and New Jersey petitions meet the specific requirements of section 54.201(a)(2) for waiver of the requirement that only carriers designated as ETCs may receive federal universal service support after January 1, 1998.²³

9. Generally, the Commission's rules may be waived for good cause shown.²⁴ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.²⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁷ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.

10. We find that the facts demonstrate that the D.C. and New Jersey Commissions were unable to designate Bell Atlantic-DC, United-NJ, and Bell Atlantic-NJ as ETCs prior to January 1, 1998. As noted above, Commission rules provide that a state commission that is unable to designate as an ETC, by January 1, 1998, a carrier that sought such designation before January 1, 1998, may, once it has designated such carrier, file a petition requesting that the carrier receive universal service support retroactive to January 1, 1998.²⁸ According to the petitions, Bell Atlantic-DC, United-NJ, and Bell Atlantic-NJ sought designation from their respective state commissions prior to January 1, 1998, and took all reasonable steps to be designated prior to January 1, 1998.²⁹ The petitions indicate that each of these carriers was designated as an ETC after January 1, 1998.³⁰

11. We find that, for the purposes of the pending waiver requests, the D.C. and New Jersey Commissions provide adequate justifications as to why they were unable to designate Bell Atlantic-DC, United-NJ, and Bell Atlantic-NJ as ETCs by January 1, 1998. For example, the D.C. Commission cites significant staff reductions and increased workloads that made it

²³ See 47 C.F.R. § 54.201(a)(2).

²⁴ 47 C.F.R. § 1.3.

²⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. Denied*, 409 U.S. 1027 (1972).

²⁶ *Northeast Cellular Telephone Co., v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁷ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

²⁸ 47 C.F.R. § 54.201(a)(2).

²⁹ D.C. Petition at 1-2, 5; United-NJ Petition at 2, 4; Bell Atlantic-NJ Petition at 1-2, 4.

³⁰ See D.C. Commission Order (designating Bell Atlantic-DC as an ETC on December 17, 1998); United-NJ Petition at 2 (indicating that United-NJ was designated as an ETC on January 22, 1998); Bell Atlantic-NJ Petition at 1-2 (indicating that Bell Atlantic-NJ was designated as an ETC on February 18, 1998).

impossible to address Bell Atlantic-DC's request for designation prior to January 1, 1998.³¹ Similarly, the New Jersey Commission cites "the press of Board business" that precluded designation prior to January 1, 1998.³²

12. We conclude that it is in the public interest to permit Bell Atlantic-DC, United-NJ, and Bell Atlantic-NJ to receive federal universal service support retroactive to January 1, 1998. The commenters unanimously support this conclusion.³³ As the D.C. and New Jersey Commissions note, the provision of universal service support to these carriers is necessary to ensure the affordable provision of service to consumers, including many low-income consumers.³⁴ We conclude that, but for the circumstances that prevented the D.C. and New Jersey Commissions from designating Bell Atlantic-DC, United-NJ, and Bell Atlantic-NJ as ETCs prior to January 1, 1998, these carriers would have been entitled to federal universal service support as of January 1, 1998.³⁵ We agree with the D.C. and New Jersey Commissions that denying these petitions would prevent these carriers from receiving universal service support for the period prior to designation, and thus unjustly harm these consumers. We thus conclude that waiver of section 54.201(a)(1) is warranted, and therefore Bell Atlantic-DC, United-NJ, and Bell Atlantic-NJ will receive federal universal service support retroactive to January 1, 1998. We direct the Universal Service Administrative Company to provide such support.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to section 54.201 of the Commission's rules, 47 C.F.R. § 54.201, and the authority contained in section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, the Petition for Waiver filed on December 17, 1998, by the Public Service Commission of the District of Columbia on behalf of Bell Atlantic-Washington, D.C., Inc. (Verizon Washington, D.C., Inc.) is GRANTED.

14. IT IS FURTHER ORDERED that the Petition for Waiver filed on December 24, 1998, by the New Jersey Board of Public Utilities on behalf of United Telephone Company of New Jersey, Inc. is GRANTED.

³¹ D.C. Petition at 4-5 (noting staff reductions of as much as 40 percent).

³² United-NJ Petition at 4; Bell Atlantic-NJ Petition at 4.

³³ See OPC Comments at 2-3; Sprint Comments at 1-3; Verizon Comments at 1-2; Bell Atlantic-DC Reply Comments at 1-2; D.C. Commission Reply Comments at 1. Although OPC supports the Bell Atlantic-DC Petition, it suggests that the current use of Lifeline funds in D.C. may be inconsistent with the Commission's rules. Specifically, OPC suggests that the D.C. Commission may be allowing Bell Atlantic-DC to apply Lifeline funds to services other than the "core" supported services. OPC Comments at 3-4. The D.C. Commission, however, responds that it "did not permit BA-DC to use universal service support to fund non-core services." D.C. Commission Reply Comments at 3-4. See also Bell Atlantic Reply Comments at 2. We believe that the resolution of this issue is outside the scope of this proceeding. We therefore make no findings relating to these claims.

³⁴ See D.C. Petition at 5-6; United-NJ Petition at 4-5; Bell Atlantic-NJ Petition at 4.

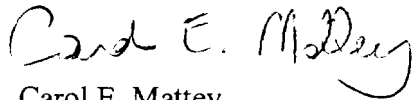
³⁵ See Sprint Comments at 2; Verizon Comments at 1-2.

15. IT IS FURTHER ORDERED that the Petition for Waiver filed on December 28, 1998, by the New Jersey Board of Public Utilities on behalf of Bell Atlantic-New Jersey, Inc. (Verizon New Jersey, Inc.) is GRANTED.

16. IT IS FURTHER ORDERED that the Universal Service Administrative Company SHALL PROVIDE to Bell Atlantic-Washington, D.C., Inc., United Telephone Company of New Jersey, Inc. and Bell Atlantic-New Jersey, Inc., federal universal service support retroactive to January 1, 1998, as discussed herein.

17. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Common Carrier Bureau to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau